

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
918 SIXTEENTH STREET, N.W.  
SUITE 200  
WASHINGTON, D.C.

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

20006-2973

(202) 393-2266  
FAX (202) 393-2156

18487

NOV 24 1993

NOV 24 1993 1:52 PM

OF COUNSEL  
URBAN A. LESTER

INTERSTATE COMMERCE COMMISSION

0100051068

November 24, 1993

18487/A

NOV 24 1993

NOV 24 1993 1:52 PM

INTERSTATE COMMERCE COMMISSION

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

LICENSING BRANCH

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two duly executed copies of a Loan and Security Agreement, dated as of November 23, 1993, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177 and one executed and one certified copy of Supplement No. 101, a secondary document related to the aforesaid primary document.

The names and addresses of the parties to the enclosed document are:

Debtor: MERCO Joint Venture  
157 Albany Avenue  
Freeport, New York 11520

Secured Party: The CIT Group/Equipment Financing, Inc.  
1211 Avenue of the Americas  
New York, New York 10036

A description of the railroad equipment covered by the enclosed documents is:

twenty-three (23) Ultra 2-Unit Articulated Railcars bearing  
road marks and numbers MERX 0001 - MERX 0023,  
inclusive.

Mr. Sidney L. Strickland, Jr  
November 24, 1993  
Page 2

Also enclosed is a check in the amount of \$36.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of each of the enclosed documents to the undersigned.

A short summary of the enclosed primary document to appear in the Commission's Index is:

Loan and Security Agreement, with Supplement No. 101, between MERCO Joint Venture and The CIT Group/Equipment Financing, Inc covering 23 articulated railcars MERX 0001 - MERX 0023, inclusive.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Robert W. Alvord', written over the closing text.

Robert W. Alvord

RWA/bg  
Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

11/24/93

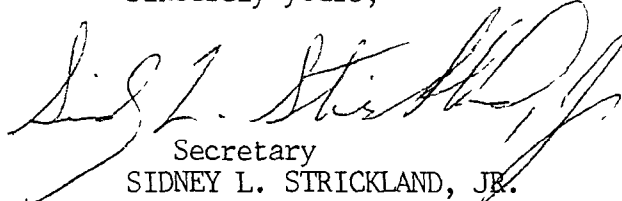
OFFICE OF THE SECRETARY

Robert w. Alvord  
Alvord & Alvord  
918 16th St N.W.  
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on 11/24/93 at 10:50am, and assigned  
recordation number(s). 18487 & 18487-A

Sincerely yours,

  
Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

18487

RECORDED & INDEXED FILED-485

NOV 20 1993 1 50 PM

INTERSTATE COMMERCE COMMISSION

LOAN AND SECURITY AGREEMENT

by and between

MERCO JOINT VENTURE

and

THE CIT GROUP/EQUIPMENT FINANCING, INC.

Dated as of November 23, 1993

THIS AGREEMENT IS, AMONG OTHER THINGS, A MORTGAGE ON ROLLING STOCK AND HAS BEEN FILED WITH THE INTERSTATE COMMERCE COMMISSION PURSUANT TO 49 U.S.C. Sec. 11303 ON \_\_\_\_\_, 1993, AT \_\_\_\_\_ .M. RECORDATION NUMBER \_\_\_\_\_.

# TABLE OF CONTENTS

SECTION		Page
1	RECITALS; DEFINITIONS .....	1
1.1	Recitals .....	1
1.2	Defined Terms .....	1
1.3	Accounting Terms .....	8
2	AMOUNT AND TERMS OF LOAN .....	8
2.1	Commitment .....	8
2.2	The Notes .....	8
2.3	Prepayment .....	9
2.4	Use of Proceeds .....	10
3	CONDITIONS OF BORROWING .....	10
3.1	Conditions of Initial Loan .....	10
(a)	Certificate of Incumbency of Debtor .....	10
(b)	Resolutions .....	11
(c)	Certificate of Incumbency of Each Guarantor .....	11
(d)	Corporate Resolutions and Related Matters...	11
(e)	The Contract.....	11
(f)	Consent .....	12
(g)	Transportation Contract .....	12
(h)	Interchange Agreement .....	12
(i)	Opinion of Counsel .....	12
(j)	Warranty; Appraisal .....	12
3.2	Conditions of Each Loan .....	12
(a)	Supplement .....	13
(b)	Note .....	13
(c)	Equipment Delivery .....	13
(d)	Invoice and Title .....	13
(e)	Payment of Equipment Cost .....	13
(f)	Insurance .....	13
(g)	Security Interest .....	13
(h)	Representations .....	13
(i)	No Material Adverse Change .....	14
(j)	Environmental Matters.....	14
(k)	Other Documents and Information .....	14
(l)	Legal Matters .....	14
(m)	Warranty; Appraisal .....	14
(n)	Equipment Information .....	14
4	REPRESENTATIONS AND WARRANTIES .....	14
4.1	Organization .....	14
4.2	Power and Authority .....	15
4.3	Consents and Permits .....	15
4.4	No Legal Bar .....	15
4.5	No Defaults .....	15
4.6	Enforceability .....	16
4.7	No Litigation .....	16
4.8	Title to Equipment .....	16
4.9	CIT's Security Interest .....	16
4.10	INTENTIONALLY OMITTED .....	16
4.11	Taxes .....	16
4.12	Principal Place of Business .....	17
4.13	No Other Name .....	17

		<u>Page</u>
	4.14 The Contract .....	17
	4.15 The Joint Venture .....	18
	4.16 Environmental Matters and Other Information .....	18
	4.17 Insurance .....	18
	4.18 Equipment Condition .....	18
SECTION	5	
	COVENANTS .....	19
	5.1 Notices .....	19
	5.2 Laws, Obligations; Operations .....	19
	5.3 Inspection .....	20
	5.4 Books .....	20
	5.5 Financial Information .....	20
	5.6 Further Assurances .....	20
	5.7 No Disposition of Collateral .....	21
	5.8 No Liens .....	21
	5.9 Debtor's Title; CIT's Security Interest; Personal Property .....	21
	5.10 No Changes in Debtor .....	22
	5.11 Use of Equipment; Maintenance; Identification .....	22
	5.12 Insurance .....	24
	5.13 Contract Payments .....	25
	5.14 Contract Amendments .....	25
	5.15 Out-of-Specification Sludge; Hazardous Waste .....	25
	5.16 Transportation Matters .....	25
SECTION	6 SECURITY INTEREST .....	26
	6.1 Grant of Security Interest .....	26
	6.2 CIT Appointed as Attorney-in-Fact .....	26
SECTION	7 EVENTS OF DEFAULT .....	27
SECTION	8 REMEDIES .....	29
SECTION	9 MISCELLANEOUS .....	31
	9.1 No Waiver; Cumulative Remedies .....	31
	9.2 Notices .....	31
	9.3 Payment of Expenses and Taxes; Indemnity; Performance by CIT of Debtor's Obligations .....	32
	9.4 Commitment Fee .....	33
	9.5 Survival of Representations and Warranties .....	33
	9.6 Amendments; Waivers .....	33
	9.7 Counterparts .....	34
	9.8 Headings .....	34
	9.9 Successors or Assigns .....	34
	9.10 Merger Clause .....	34
	9.11 Construction .....	34
	9.12 Jurisdiction .....	34
	9.13 Waiver of Trial by Jury .....	35
	9.14 Authorization to Date, Complete Blanks and Correct Errors .....	35
	9.15 Authorization to Sign .....	35

**Exhibits**

Exhibit A    Equipment Description  
Exhibit B    Supplement  
Exhibit C    Promissory Note  
Schedule A   Consents and Permits (Sec. 4.3)  
Schedule B   No Defaults (Sec. 4.5)

## LOAN AND SECURITY AGREEMENT

LOAN AND SECURITY AGREEMENT, dated as of November 23, 1993, between MERCO JOINT VENTURE, a New York joint venture comprised of Peter Scalamandre & Sons, Inc., a New York corporation, John P. Picone, Inc., a New York corporation, and RGM Liquid Waste Removal Corp., a New York corporation ("Debtor"), and THE CIT GROUP/ EQUIPMENT FINANCING, INC. ("CIT"), a New York corporation. In consideration of the mutual agreements contained herein, the parties hereto agree as follows:

### RECITALS

1. Debtor has entered into a Supply and Service Agreement, made and entered into September 16, 1991 with The City of New York, acting by and through the Commissioner of the Department of Environmental Protection of the City of New York ("City") (as from time to time amended, modified or supplemented, "Contract").

2. Pursuant to the Contract, Debtor has agreed, inter alia, to assist the City in the disposal of treated sewage sludge and is currently performing its duties under the Contract.

3. The treated sewage sludge is transported in sealed inter-modal containers by the Debtor from New York City to the Application Site (as hereinafter defined) by truck, rail barge and rail, and Debtor has decided to purchase up to 115 rail cars for transport purposes, which purchase is to be financed or refinanced by the Loans (as hereinafter defined) made pursuant hereto.

### SECTION 1. RECITALS; DEFINITIONS

1.1 Recitals. The above recitals are true and correct and are incorporated herein by this reference.

1.2 Defined Terms. As used in this Agreement the following terms shall have the following defined meanings, unless the context otherwise requires (such terms to be equally applicable to both singular and plural forms of the terms defined):

"AAR" shall mean the Association of American Railroads or any successor thereto.

"Affiliate" of any specified Person shall mean any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person shall mean the power, direct or indirect, to vote 10% or more of the securities having voting power for the election of directors of such Person, or otherwise to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.



"Agreement", "hereof", "hereto", "hereunder" and words of similar import shall mean this Loan and Security Agreement, as the same may from time to time be amended, modified or supplemented.

"Application Site" shall mean Mile High Ranch in Sierra Blanca, Hudspeth County, Texas, real property owned by Sierra Blanca Ranch Associates, L.P., or such other locations as shall have satisfied all Environmental Matters, shall have been approved under the Contract and shall be receiving applications of Sludge for beneficial use.

"Appraisal" shall mean the inspection and appraisal done by CIT or its agent with respect to the Equipment.

"Business Day" shall mean a day other than a Saturday, Sunday or legal holiday under the laws of the State of New York.

"Casualty Prepayment Percentage" shall mean, on the date of the required prepayment of any Note pursuant to Subsection 2.3(a) of this Agreement, the product obtained by multiplying 10% by a fraction, the numerator of which will be the number of Installment Payment Dates with respect to such Note remaining after such date of prepayment (including the Installment Payment Date, if any, on which such prepayment is made) and the denominator of which shall be the total number of Installment Payment Dates with respect to such Note.

"CIT" as defined in the introductory paragraph of this Agreement.

"Closing Date" shall mean each date on which a Loan is made pursuant hereto.

"Code" shall mean the Uniform Commercial Code as from time to time in effect in any applicable jurisdiction.

"Collateral" shall mean the Equipment and the Proceeds thereof and the Contract Payments and the Manufacturers' Warranties.

"Commitment" shall mean the obligation of CIT to make the Loans in the aggregate principal amount specified in Subsection 2.1 of this Agreement.

"Commitment Fee" as defined in Subsection 9.4 hereof.

"Consent to Assignment" shall mean the consent to assignment pursuant to which the City, inter alia, consents to the assignment of the Contract Payments to CIT and agrees

to make the Contract Payments directly to CIT upon written notice from CIT that a Default or Event of Default has occurred hereunder, as set forth in the Consent to Assignment.

"Contract" shall have the meaning set forth in the first paragraph of the Recitals hereof.

"Contract Payments" shall mean all Debt Service Lump Sum payments and all Unamortized Cost payments made by the City under the Contract.

"Cost" shall mean, with respect to any item or Unit of Equipment, the manufacturer's or supplier's invoiced purchase price therefor (after giving effect to any discount or other reduction) payable by Debtor, which amount shall be set forth in the Supplement pertaining to such item or Unit of Equipment.

"Debt Service Lump Sum" shall have the meaning assigned to it in the Contract.

"Debtor" as defined in the introductory paragraph of this Agreement.

"Default" shall mean any event which with notice, lapse of time, and/or any further condition, event or act would constitute an Event of Default.

"Environmental Matters" shall mean all certificates, certifications, permits, licenses, authorizations, environmental impact statements, procedures and otherwise required to be obtained by Debtor or any other party from each federal, state and local agency in order for Debtor to carry on the business contemplated by the Contract or required by the nature of any other business in which the Debtor may be engaged.

"Equipment" shall mean collectively those items of railroad rolling stock which are listed on Supplements hereto, together with all accessories, parts, repairs, replacements, substitutions, attachments, modifications, renewals, additions, improvements, upgrades and accessions of, to or upon such items of equipment, now or at any time hereafter acquired, and, unless the context otherwise specifies, all records and documents relating to such items of railroad rolling stock. Exhibit A hereto contains a general list of the Equipment the purchase of which is intended to be financed or refinanced hereunder, and which is contemplated to be 90 (more or less) new articulated twin-unit flat cars manufactured by Johnstown America Corp. and up to 23 flat cars, manufactured by Berwick Freight Car

Company, all used in the transport of processed sludge from New York City to the Application Site.

"Event of Default" as defined in Section 7 of this Agreement.

"Event of Loss" shall mean, with respect to any item of Equipment, (a) the actual or constructive loss of such item of Equipment or the use thereof, due to theft, destruction, damage beyond repair or damage from any reason whatsoever, to an extent which makes repair uneconomical, or rendition thereof unfit for normal use, or the condemnation, confiscation or seizure of, or requisition of title to or use of, such item of Equipment by any governmental authority or any other person, whether or not acting under color of governmental authority or (b) termination of the Contract, as the result of a Termination for Convenience pursuant to Article XII of the Contract or an event of Force Majeure pursuant to Section 14.1.D of the Contract.

"Force Majeure" shall have the meaning assigned to it in the Contract.

"Guarantor" or "Guarantors" shall mean each of Peter Scalamandre & Sons, Inc., John P. Picone, Inc., and RGM Liquid Waste Removal Corp.

"Guaranty" or "Guaranties" shall mean the Guaranty Agreements given by each of the Guarantors respecting the Debtor's payment and performance and other obligations under this Agreement.

"ICC" shall mean the Interstate Commerce Commission or any successor thereto.

"Installment Payment Date" shall mean, with respect to any Note, each date on which a regular installment of principal and interest is due on such Note.

"Interchange Agreement" shall mean the agreement by which Debtor becomes subject to the Interchange Rules.

"Interchange Rules" shall mean (a) any and all rules of the Federal Railroad Administration and the Interstate Commerce Commission and (b) the field manual of interchange rules or supplements thereto of the Mechanical Division, Association of American Railroads, as the same may be in effect from time to time.

"Interest Period" shall mean, with respect to any Loan at the LIBOR Rate, each successive one-month period occurring from the date such Loan is made to the last

Installment Payment Date. For such Loan, the initial Interest Period shall begin on the date the Loan is made and continue up to but not including the first Installment Payment Date, and each subsequent Interest Period shall begin on the Installment Payment Date following the last day of the preceding Interest Period and continue up to but not including the next Installment Payment Date. Interest shall be charged for each day of each Interest Period.

"Joint Venture Agreement" shall mean that certain Joint Venture Agreement, dated September 10, 1991, by and among the Guarantors, as from time to time amended.

"Late Charge Rate" shall mean a rate per annum equal to the higher of two percent (2%) over the Prime Rate and eighteen percent (18.00%), but not to exceed the highest rate permitted by applicable law.

"LIBOR Rate" shall mean the rate of interest equal to the thirty (30)-day London Interbank Offered Rate as reported and published in The Wall Street Journal. The LIBOR Rate in effect during any Interest Period shall be the LIBOR Rate in effect at the close of business on the latest Rate Determination Date preceding the Installment Payment Date upon which such Interest Period commences.

"Liens" shall mean liens, mortgages, security interests, pledges, title retentions, charges, financing statements or other encumbrances of any kind whatsoever.

"Loan" shall mean each loan made by CIT pursuant to this Agreement.

"Managing Party" shall mean Peter Scalamandre & Sons, Inc., as Managing Party under the Joint Venture Agreement or any successor thereto of which CIT has written notice.

"Manufacturers' Warranties" shall mean the warranties of Berwick Freight Car Company, Johnstown America Corp. and any other manufacturer of the Equipment given in favor of Debtor.

"Note" shall mean each promissory note of Debtor evidencing a Loan, as described in Subsection 2.2 of this Agreement.

"Obligations" shall mean (a) the aggregate unpaid principal amount of, and accrued interest on, the Notes (including any interest accruing after the filing of a petition in bankruptcy, insolvency, or like proceeding, with respect to Debtor, whether or not the claim for such interest is allowed in such proceeding); (b) all other

obligations and liabilities of Debtor, now existing or hereafter incurred, under, arising out of or in connection with this Agreement or any Note; and (c) any and all other present and future indebtedness, obligations and liabilities of any kind whatsoever of Debtor to CIT, whether direct or indirect, joint or several, absolute or contingent, liquidated or unliquidated, secured or unsecured, matured or unmatured and whether originally contracted with CIT or otherwise acquired by CIT or from time to time reduced and thereafter increased, in each case whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise, and all deferrals, renewals, extensions and refinancings of any indebtedness, obligations or liabilities referred to above.

"Parent Company" shall mean any Person having beneficial ownership (directly or indirectly) of 25% or more of Debtor.

"Person" shall mean an individual, partnership, corporation, business trust, joint stock company, trust, incorporated association, joint venture, governmental authority or other entity of whatever nature.

"Prepaid Principal Amount" as defined in Subsection 2.3(a) of this Agreement.

"Prime Rate" shall mean the rate publicly announced from time to time as the prime rate of Chemical Bank ("Chemical Bank"); the Prime Rate shall be determined by CIT at the close of business on the 15th day of each calendar month (if the 15th day is not a Business Day then on the first preceding Business Day), and shall become effective as of the first day of the calendar month succeeding such determination and shall continue in effect to, and including, the last day of said calendar month. The Prime Rate is not intended to be the lowest rate of interest charged by Chemical Bank in connection with extensions of credit to debtors.

"Proceeds" shall have the meaning assigned to it in the Code, and in any event, shall include, but not be limited to, (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Debtor from time to time with respect to any of the Equipment; (b) any and all payments (in any form whatsoever) made or due and payable to Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Equipment by any governmental body, authority, bureau or agency or any other person (whether or not acting under color of governmental authority); and (c) accounts arising out of, any chattel paper evidencing, any

lease of, and any and all other rents or profits or other amounts from time to time paid or payable in connection with, any of the Equipment.

"Prohibited Transaction" as defined in Subsection 2.3(b) of this Agreement.

"Prohibited Transaction Percentage" shall mean, on the date of the required prepayment of the Notes pursuant to the provisions of Subsection 2.3 of this Agreement, the product obtained by multiplying 5% by a fraction, the numerator of which is the number of Installment Payment Dates remaining as of the date of prepayment (including the Installment Payment Date, if any, on which prepayment is made) and the denominator of which is the total number of Installment Payment Dates.

"Rate Determination Date" shall mean the 15th day of each calendar month, or if the 15th day is not a day on which The Wall Street Journal is published (or if published, does not publish the LIBOR Rate), then the first preceding day on which The Wall Street Journal is published and reports the LIBOR Rate.

"Replacement Unit" shall have the meaning specified in Subsection 2.3(a) of the Loan Agreement.

"Section 8 Percentage" shall mean, on the date of the acceleration of any Note pursuant to Section 8 of this Agreement, the product obtained by multiplying 10% by a fraction, the numerator of which will be the number of Installment Payment Dates remaining with respect to such Note (including due and unpaid installments together with all installments regularly scheduled to become due through the final Installment Payment Date) and the denominator of which shall be the total number of Installment Payment Dates with respect to such Note.

"Specifications" shall mean the statement of specifications for new and remanufactured railcars and locomotives of the applicable manufacturer or remanufacturer of each Unit of Equipment, which specifications have been delivered to CIT and are attached as an exhibit to the Appraisal.

"Supplement" shall mean each Supplement executed and delivered by Debtor in substantially the form of Exhibit B attached hereto.

"Transportation Contract" shall mean that certain contract, pursuant to which Sludge (as defined in the Contract) is transported, among Debtor, Cross Harbor Rail

Services, Inc., Consolidated Rail Corp., and The Southern Pacific Transportation Co., dated June 15, 1992, or any successor contract thereto.

"Unamortized Cost" shall have the meaning assigned to it in the Contract.

"Unit" shall mean an individual item of rolling stock constituting Equipment.

1.3 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.

## SECTION 2. AMOUNT AND TERMS OF LOAN.

2.1 Commitment. Subject to the terms and conditions of this Agreement, CIT agrees to make Loans, from time to time, to Debtor in an aggregate principal amount not to exceed the lesser of (a) \$7,500,000.00 and (b) an amount which, when combined with the outstanding principal amount of all other loans from CIT to Debtor hereunder or under any other loan agreement or agreement for lease or for the deferred purchase price of property, does not exceed \$10,000,000.00. CIT shall not be obligated to make more than three (3) Loans hereunder. The obligation of CIT to make Loans hereunder shall terminate on March 31, 1994. Debtor shall give CIT at least five (5) Business Days' prior written notice of the date and amount of each proposed Loan.

### 2.2 The Notes.

(a) Each Loan shall be evidenced by a note of Debtor substantially in the form of Exhibit C hereto, with appropriate insertions therein as to amounts and dates. Each Note shall (i) be dated the date on which the Loan evidenced thereby is made; (ii) be for the term specified in such Note; (iii) be stated to mature in forty-eight (48) consecutive monthly installments, which installments will be payable on the dates and in the amounts set forth in such Note; and (iv) bear interest from the date thereof on the unpaid principal amount thereof at the rate of the LIBOR Rate plus 2.90% per annum until such amount shall become due and payable (whether at the stated maturity thereof, by acceleration or otherwise). Any amount not paid when due under the Notes shall bear late charges thereon, calculated at the Late Charge Rate, from the due date thereof until such amount shall be paid in full.

(b) Each Note shall be identified with the Units of Equipment financed by the Loan it evidences by reference to the Supplement covering such Units of Equipment. Such identification of the Notes is for convenience of reference only and is not

intended to imply that any Note is collateralized only by the Unit of Equipment identified with it; all Notes being equally secured by all Collateral.

### 2.3 Prepayment.

(a) Event of Loss Prepayment. In the event that any Unit of Equipment shall suffer an Event of Loss, Debtor shall (i) if such Event of Loss is not described in clause (b) of such definition, at its option so long as no Default or Event of Default is continuing hereunder, replace such Unit of Equipment with a replacement unit to be of the same car type (or otherwise approved by CIT, which approval shall not be unreasonably withheld), the same or a later year of manufacture as the Unit replaced and free and clear of all Liens and to have a fair market value, utility, remaining economic useful life and condition at least equal to the Unit so replaced (assuming such Unit was in the condition required to be maintained by the terms of this Agreement; "Replacement Unit") or (ii) make a prepayment on the Note identified with such Unit of Equipment, within 30 days after the occurrence of such Event of Loss, in an amount determined (A) by multiplying (1) the unpaid principal amount of such Note by (2) a fraction the numerator of which shall be the Cost of the Unit of Equipment which suffered the Event of Loss and the denominator of which shall be the original principal amount of said Note (the amount obtained by multiplying (A)(1) and (A)(2) hereof shall be herein referred to as the "Prepaid Principal Amount"), (B) by adding interest accrued, with respect to the Prepaid Principal Amount, to the date of such prepayment and (C) by adding an amount equal to (x) the applicable Casualty Prepayment Percentage multiplied by (y) the Prepaid Principal Amount. Upon payment in full of any such prepayment amount, and so long as no Default or Event of Default has occurred and is continuing, the Unit of Equipment subject to such Event of Loss shall be released from the security interest of this Agreement.

In the event that any Unit shall suffer an Event of Loss, Debtor shall promptly and fully inform CIT of such Event of Loss. If Debtor shall have elected to replace such Unit(s) in accordance with the terms of this Section 2.3(a), Debtor shall, at its own cost and expense, prior to or concurrently with such replacement, (i) cause a supplement hereto, subjecting such Replacement Unit to the lien of this Agreement, duly executed by Debtor, to be delivered to CIT for execution, and upon such execution to be filed with the ICC pursuant to 49 U.S.C. Sec. 11303; and (ii) cause to be delivered to CIT an opinion of counsel as to the due filing of such supplement with respect to any Replacement Unit and the perfection of the first priority and only Lien of CIT in such Replacement Units.

(b) Prohibited Transaction Prepayment. A Prohibited Transaction may be consummated only with CIT's prior written



consent. Not less than twenty (20) Business Days prior to the date the proposed Prohibited Transaction is expected to be consummated, Debtor shall give CIT written notice of the proposed Prohibited Transaction. In the event CIT does not consent to the Prohibited Transaction and the Prohibited Transaction is nonetheless to be consummated, Debtor shall, on or prior to the date the Prohibited Transaction is to be consummated, prepay the outstanding principal under all Notes together with (1) all interest accrued thereon, (2) any other amounts then due and owing hereunder or under the Notes, and (3) an amount equal to the product of the Prohibited Transaction Percentage and the outstanding principal amount of the Notes. A "Prohibited Transaction" shall be one in which: (i) Debtor enters into any transaction of merger, consolidation or other reorganization or (ii) any Guarantor ceases to be one of the joint venturers of Debtor or (iii) Debtor sells, transfers or otherwise disposes of all or any substantial part of its assets (whether in one transaction or a series of transactions) or (iv) Debtor liquidates or dissolves.

(c) Voluntary Prepayment. Debtor may, upon thirty (30) days prior written notice to CIT, prepay all but not less than all of the Loans on any scheduled payment date hereunder, commencing on the second anniversary hereof, such prepayment to be in an amount equal to the sum of (i) the unpaid principal amount of the Loans outstanding on the date of prepayment, plus (ii) interest accrued to the date of prepayment, plus (iii) a premium determined by multiplying (A) the unpaid principal amount of the Loans outstanding on the date of prepayment by (B) the product of (1) a fraction, the numerator of which shall be the number of Installment Payment Dates remaining under the Note (including the date of prepayment) and the denominator of which is twenty-four (24) and (2) 10.00% and (iv) all other amounts due and owing hereunder on the date of prepayment.

(d) Except as provided in paragraphs (a), (b) and (c) above, the Notes may not be prepaid in whole or in part.

2.4 Use of Proceeds. The proceeds of each Loan shall be applied by Debtor solely in financing or refinancing the Cost of the Unit of Equipment identified therewith.

### SECTION 3. CONDITIONS OF BORROWING.

3.1 Conditions of Initial Loan. CIT shall not be required to make the initial Loan hereunder unless on the Closing Date of such Loan:

(a) Certificate of Incumbency of Debtor. CIT shall have received (i) a certificate of incumbency of Debtor signed by the Secretary or Assistant Secretary of the

Managing Party, which certificate shall certify the names of the officers of the Guarantors authorized to execute any documents hereunder or under any other related document on behalf of Debtor, together with specimen signatures of such officers, and CIT may conclusively rely on such certificate until receipt of a further certificate of the Secretary or Assistant Secretary of the Managing Party cancelling or amending the prior certificate and submitting the signatures of the officers named in such further certificate and (ii) a copy of the Joint Venture Agreement, as amended, certified by the Secretary or an Assistant Secretary of the Managing Party as a true and complete copy; and (iii) a certificate of good standing with respect to the Guarantors, dated not earlier than ten (10) days prior to the initial Closing Date, issued by the State of New York and by the State of Texas.

(b) Resolutions. CIT shall have received a certified copy of all proceedings of Debtor (and/or the Guarantors) evidencing that all action required to be taken in connection with the authorization, execution, delivery and performance of this Agreement and the Notes and the transactions contemplated hereby has been duly taken.

(c) Certificate of Incumbency of Each Guarantor. CIT shall have received a certificate of incumbency of each Guarantor, signed by the Secretary or Assistant Secretary of each respective Guarantor, which certificate shall certify the names of the officers of each respective Guarantor authorized to execute any documents hereunder or under any other related document on behalf of each respective Guarantor, together with specimen signatures of such officers, and CIT may conclusively rely on such certificate until receipt of a further certificate of the Secretary or Assistant Secretary of a respective Guarantor cancelling or amending the prior certificate and submitting the signatures of the officers named in such further certificate.

(d) Corporate Resolutions and Related Matters. CIT shall have received (i) a certified copy of all corporate proceedings of each respective Guarantor evidencing that all action required to be taken in connection with the authorization, execution, delivery and performance of this Agreement and the Notes and its respective Guaranty and the transactions contemplated hereby and thereby have been taken; (ii) copies of the articles of incorporation, as amended, and the by-laws, as amended, of each respective Guarantor, certified as true and complete by the Secretary or an Assistant Secretary thereof; and (iii) a certificate of good standing, dated not earlier than ten (10) days prior to the initial Closing Date, for each Guarantor issued by the

Secretary of State's office of the States of New York and Texas.

(e) The Contract. CIT shall have received a copy of the Contract, certified by an authorized officer of the Commissioner of the Department of Environmental Protection of the City of New York as a true and complete copy thereof, and duly registered according to the laws of the City of New York.

(f) Consent. CIT shall have received a counterpart original of the Consent to Assignment, duly executed by an authorized officer of the City, such Consent to Assignment to be in form and substance satisfactory to CIT.

(g) Transportation Contract. CIT shall have received a copy of each Transportation Contract, certified as a true copy by the Secretary of the Managing Party, and each such Transportation Contract shall have been found to be satisfactory by CIT.

(h) Interchange Agreement. CIT shall have received a copy of the Interchange Agreement, certified as a true copy by the Secretary of the Managing Party, and such Agreement shall have been found to be satisfactory by CIT.

(i) Opinion of Counsel. CIT shall have received the written opinion addressed to it of counsel for Debtor satisfactory to CIT, (A) as to matters contained in Section 4, Subsections 4.1 through 4.3(a), 4.4, 4.6 and 4.7, (B) as to matters contained in Subsections 4.8 and 4.9 with respect to the Equipment listed on the first Supplement to this Agreement, (C) as to matters contained in Subsections 4(a) through 4(f), inclusive, of each Guaranty and as to such other matters incident to the transactions contemplated by this Agreement as CIT may reasonably request, including, without limitation, the favorable written opinion of Alvord and Alvord, special ICC counsel for CIT.

(j) Warranty; Appraisal. (i) CIT shall have received a copy of each manufacturer's warranty covering the Equipment, certified as a true copy by the Secretary of the Managing Party, the terms of each warranty shall have been found to be satisfactory by CIT, and each manufacturer shall have entered into an agreement with CIT pursuant to which its warranty is assigned to CIT upon the occurrence of a Default or Event of Default, and (ii) CIT or its agent shall have performed the Appraisal of the Equipment, the results of which shall have been found to be satisfactory to CIT. In all events the applicable Specifications for each Unit of Equipment shall have been met.

3.2 Conditions of Each Loan. CIT shall not be required to make any Loan hereunder (including the initial Loan) unless on the Closing Date of such Loan:

(a) Supplement. Debtor shall have executed and delivered to CIT a Supplement describing in a manner satisfactory to CIT the Unit of Equipment to be financed by such Loan.

(b) Note. The Note evidencing such Loan shall have been duly executed and delivered to CIT.

(c) Equipment Delivery. The Unit of Equipment being financed by such Loan shall have been duly delivered to and accepted by Debtor.

(d) Invoice and Title. CIT shall have received copies of the invoice or invoices covering the acquisition of the items of Equipment constituting the Unit of Equipment being financed with such Loan together with copies of the bills of sale, if any, conveying such items to Debtor.

(e) Payment of Equipment Cost. CIT shall be satisfied that the Cost of each item of Equipment constituting the Unit of Equipment being financed by such Loan has been, or concurrently with the making of such Loan will be, fully paid.

(f) Insurance. CIT shall have received evidence satisfactory to it that the Unit of Equipment being financed by such Loan is insured in accordance with the provisions of this Agreement.

(g) Security Interest. All filings, recordings and other actions deemed necessary or desirable by CIT in order to establish, protect, preserve and perfect its security interest in the Unit of Equipment being financed by such Loan, and in all other Collateral, as a valid perfected first priority security interest shall have been duly effected, including, without limitation, recordation of a counterpart original of this Agreement with the ICC in conformity with 49 U.S.C. Sec. 11303 (or any successor provision thereof) and filing of Uniform Commercial Code financing statements naming Debtor as debtor and CIT as secured party in such public offices as are deemed necessary or appropriate by CIT to perfect the right, title and interest of CIT in the Collateral, and all fees, taxes and other charges relating to such filings and recordings shall have been paid by Debtor.

(h) Representations. (i) The representations and warranties contained in this Agreement, in each Guaranty and

in the Contract shall be true and correct in all respects on and as of the date of the making of such Loan with the same effect as if made on and as of such date; (ii) no Default or Event of Default shall be in existence on the date of the making of such Loan or shall occur as a result of such Loan; and (iii) the acceptance by Debtor of each Loan shall constitute a representation by Debtor that the statements contained in clauses (i) and (ii) above are true and correct on the date of such Loan.

(i) No Material Adverse Change. In the sole judgment of CIT, there shall have been no material adverse change in the financial condition, business or operations of Debtor or any Guarantor from the date of the last loan made by CIT to Debtor pursuant to a certain Loan and Security Agreement, dated as of December 28, 1992, between Debtor and CIT.

(j) Environmental Matters. All Environmental Matters shall be in order and evidence thereof, in form and substance to CIT in its sole discretion, shall have been delivered to CIT.

(k) Other Documents and Information. CIT shall have received from Debtor, in form and substance satisfactory to CIT, such other documents and information as CIT shall reasonably request.

(l) Legal Matters. All legal matters with respect to and all legal documents executed in connection with the transactions contemplated by this Agreement shall be satisfactory to counsel, including special counsel and special ICC counsel, for CIT.

(m) Warranty; Appraisal. To the extent necessary, the provisions of Subsection 3.1(j) shall be applicable to any Loan hereunder.

(n) Equipment Information. Debtor shall have provided to CIT the information required pursuant to the terms of Subsection 5.1(b) with respect to the Equipment the purchase of which is being financed or refinanced by such Loan.

#### SECTION 4. REPRESENTATIONS AND WARRANTIES.

In order to induce CIT to enter into this Agreement and to make each Loan, Debtor represents and warrants to CIT that:

4.1 Organization. (a) Debtor is a joint venture duly organized, validly existing and in good standing under the laws of the State of New York and is not required to qualify in any other jurisdiction in order to carry on its business, (b) Debtor

has the necessary authority and power to own the Equipment and its other assets and to transact the business in which it is engaged, (c) each of the Guarantors is duly qualified to do business in Texas and in each other jurisdiction in which the conduct of the business of Debtor or the ownership of Debtor's assets requires such qualification, except in such jurisdictions where the failure so to qualify would not have an adverse effect on the Equipment or would not have a material adverse effect on the business, operations or financial condition of Debtor.

4.2 Power and Authority. Debtor has full power, authority and legal right to execute and deliver this Agreement and the Notes, to perform its obligations hereunder and thereunder, to borrow hereunder and to grant the security interest created by this Agreement.

4.3 Consents and Permits.

(a) No consent of any other party (including any stockholders of any Guarantor, trustees or holders of indebtedness), and except for such consents, licenses, approvals or authorizations of, exemptions by, or registrations or declarations with, any governmental body, authority, bureau or agency as are listed on Schedule A attached hereto and made a part hereof, no other consents, licenses, approvals or authorizations of, or exemptions by, or registrations or declarations with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Debtor of this Agreement or the Notes, or the validity or enforceability of this Agreement or the Notes.

(b) Debtor is in compliance with all Federal, state and local laws, rules and regulations relating to the conduct of its business and has received no notice of any allegation or claim to the contrary.

4.4 No Legal Bar. The execution, delivery and performance by Debtor of this Agreement and the Notes and the Transportation Contract and the Interchange Agreement do not and will not violate any provision of any applicable law or regulation or of any judgment, award, order, writ or decree of any court or governmental instrumentality, will not violate any provision of the Joint Venture Agreement and will not violate any provision of or cause a default under any mortgage, indenture, contract, agreement or other undertaking to which Debtor is a party or which purports to be binding upon Debtor or upon any of its assets, and will not result in the creation or imposition of any Lien on any of the assets of Debtor other than the security interest intended to be created hereby.

4.5 No Defaults. Debtor (a) is not in default, and no event or condition exists which after the giving of notice or

lapse of time or both would constitute an event of default, under the Contract, the Transportation Contract, the Interchange Agreement or under any mortgage, indenture, contract, agreement, judgment or other undertaking to which Debtor is a party or which purports to be binding upon Debtor or upon any of its assets, except for any such default, event or condition which, individually or in the aggregate, would not affect Debtor's ability to perform its obligations under the Agreement or any such mortgage, indenture, contract, agreement, judgment or other undertaking and (b) has received no notice, except as set forth in Schedule B hereto, of any violation of, or claim against it under, the Contract, the Transportation Contract, the Interchange Agreement or with respect to any Environmental Matter.

4.6 Enforceability. Each of this Agreement, the Transportation Contract and the Interchange Agreement has been duly authorized, executed and delivered by Debtor and constitutes a legal, valid and binding obligation of Debtor enforceable in accordance with its terms. When executed and delivered, each Note shall have been duly authorized, executed and delivered by Debtor and shall constitute a legal, valid and binding obligation of Debtor enforceable in accordance with its terms.

4.7 No Litigation. There is no action, suit, investigation or proceeding (whether or not purportedly on behalf of Debtor) pending or threatened against or affecting Debtor or any of its assets (a) which involves any of the Equipment, the Contract, any Environmental Matter or any of the transactions contemplated by this Agreement or (b) which, if adversely determined, could have an adverse effect upon the transactions contemplated by this Agreement or a material adverse effect on the business, operations or financial condition of Debtor.

4.8 Title to Equipment. On each Closing Date Debtor shall have good and marketable title to the Unit of Equipment being financed on such Closing Date, subject to no Liens except the security interest created hereby in favor of CIT.

4.9 CIT's Security Interest. On each Closing Date CIT shall have a legal, valid and continuing first priority security interest in the Unit of Equipment being financed on such Date and in all other Collateral, prior and superior to all other Liens, and all filings, recordings or other actions necessary or desirable in order to establish, protect and perfect such security interest in favor of CIT as a perfected first priority security interest in such Equipment and other Collateral will have been duly effected, and all taxes, fees and other charges in connection therewith shall have been duly paid.

4.10 [INTENTIONALLY OMITTED]

4.11 Taxes. Debtor has filed all Federal, state and local income tax returns that are required to be filed, and has paid all taxes as shown on said returns and all assessments received by it to the extent that such taxes and assessments have become due, and Debtor does not have any knowledge of any actual or proposed deficiency or additional assessment in connection therewith. The charges, accruals and reserves on the books of Debtor in respect of Federal, state and local taxes for all open years, and for the current fiscal year, make adequate provision for all unpaid tax liabilities for such periods.

4.12 Principal Place of Business. Debtor's principal place of business is located at 157 Albany Avenue, Freeport, New York, 11520.

4.13 No Other Name. During the past five (5) years, Debtor has not changed its name and has not done business in any name other than that set forth in the introductory paragraph of this Agreement.

4.14 The Contract. Without limiting the generality of any of the foregoing:

(a) The "Service Date" (as defined in the Contract) under the Contract is July 1, 1992;

(b) Payments to CIT qualify as "Debt Service" (as defined in the Contract) under the Contract.

(c) Except as provided in Sections 4.3 and 7.4 of the Contract or as otherwise indicated in the Contract, the Debt Service Lump Sum Payments are not subject to setoff.

(d) Compliance with Rule 661 of the Rules of the New York City Procurement Policy Board will not in any way restrict or delay payments due to CIT under the Note.

(e) CIT's right and ability to obtain information for purposes of monitoring the Debtor's performance under this Agreement and Debtor's business, operations and financial condition generally will not violate the terms of Section 10.3 of the Contract.

(f) The "Sludge" is not a "Hazardous Waste" and no Sludge other than "Specification Sludge" has been transported or applied (all terms as defined in the Contract).

(g) In the event of the occurrence of an event of Force Majeure under Article XIV of the Contract, (i) scheduled repayment of the Loans will continue to be made during any full or partial work stoppage and (ii) in the



event that the City determines to terminate the Contract pursuant to the terms of Section 14.1.D., clauses (1) or (2), the amount paid by the City, under either clause, as the result of its election to terminate, will be an amount which will include a portion sufficient to repay, directly to CIT, the outstanding balance of the Loans, together with interest thereon to the date for payment.

(h) In the event of the occurrence of a default by Debtor under Article XII of the Contract, the City will either (i) purchase the Equipment for a price, payable directly to CIT, at least equal to the outstanding balance of the Loans, together with interest thereon to the date of payment, or (ii) relinquish any right or interest that it may have in the Equipment and not interfere in any action CIT may take with respect to the Equipment.

(i) There is no provision of the Contract (for termination or otherwise) under or pursuant to which CIT is not either (i) not repaid in full or (ii) not permitted to exercise all its rights and remedies under this Agreement.

(j) (i) The "Program Manager" (as defined in the Contract) is currently Michael Quinn, an employee of the City of New York Department of Environmental Protection, and (ii) the "Project Manager" (as defined in the Joint Venture Agreement) is currently James Johnson, an employee of Debtor.

(k) Pursuant to Change Order No. 1 to the Contract, the Contract has been reformed as necessary to take into account the new Application Site at Mile High Ranch and, as so reformed, remains a valid and binding obligation of the Debtor.

(l) There have been no other Change Orders to the Contract.

4.15 The Joint Venture. The City has been given written notice of, and has not objected to, the withdrawal of MERCO and Sludge Disposal, Inc., as joint venturers in Debtor.

4.16 Environmental Matters and Other Information. All information provided by or confirmed by, and all representations and warranties made by Debtor to CIT, respecting Environmental Matters and such other matters contemplated hereby, are complete and accurate.

4.17 Insurance. The Equipment is covered by the insurance required by Section 5.12 and such insurance is in full force and effect and all premiums due prior to each Closing Date in respect of such insurance shall have been paid in full.

4.18 Equipment Condition. The description of the Equipment set forth on Exhibit A to the Supplement being delivered on such Closing Date is a true, complete and accurate description of the Equipment to be delivered on such Closing Date. On each Closing Date, the Units delivered on such Closing Date will be in good working order and in the condition assumed by the Appraisal, and such Units comply in all material respects with the Specifications for such Units set forth in the Appraisal and, with respect to Used Equipment, with the requirements of Rule 88 of the AAR. No Event of Loss, or event or condition which with notice or passage of time, or both, would constitute an Event of Loss, has occurred with respect to such Units.

## SECTION 5. COVENANTS.

Debtor covenants and agrees that from and after the date hereof and so long as the Commitment or any of the Notes is outstanding:

5.1 Notices. (a) Debtor will promptly give written notice to CIT of (i) the occurrence of any Default or Event of Default; (ii) the occurrence of any Event of Loss; (iii) the commencement or threat of any litigation or proceedings affecting Debtor or the Equipment in which equitable relief (including cessation of any part of the work under the Contract) or a claim for damages in the amount of \$500,000.00 or more is being sought; (iv) any dispute between Debtor and any governmental regulatory body or other party that involves any of the Equipment or that might materially interfere with the normal business operations of Debtor; (v) any change order, modification, supplement (together with a true and complete copy thereof) to the Contract or any notice from the City that Debtor is not in compliance with the Contract; (vi) any release of Sludge other than as application for beneficial land use; and (vii) the name of each new Program Manager and Project Manager.

(b) On each June 30th after the initial Closing Date, Debtor will furnish to the Lender an accurate statement, as of the preceding December 31st, (i) showing the amount, description and reporting marks of the Units, the amount, description and reporting marks of all Units that may have suffered an Event of Loss during the twelve (12) months ending on such December 31 (or since the first Closing Date, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Lender may reasonably request, and (ii) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 5.11(d) hereof shall have been preserved or replaced.

5.2 Laws, Obligations; Operations. Debtor will (i) duly observe and conform to all requirements of any governmental authorities relating to the conduct of its business or to its

properties or assets; (ii) maintain its existence as a legal entity and obtain and keep in full force and effect all rights, franchises, licenses and permits (including without limitation those respecting Environmental Matters) which are necessary to the proper conduct of its business, including without limitation its business under the Contract and under the Transportation Contracts, (iii) obtain or cause to be obtained as promptly as possible any governmental, administrative or agency approval and make any filing or registration therewith which at the time shall be required with respect to the performance of its obligations under this Agreement, the Contract, the Transportation Contracts or the operation of its business (including without limitation those respecting Environmental Matters); and (iv) pay all fees, taxes, assessments and governmental charges or levies imposed upon any of the Equipment.

5.3 Inspection. CIT or its authorized representative may at any reasonable time or times inspect the Equipment and, following the occurrence and during the continuation of an Event of Default, may at any reasonable time or times inspect the books and records of Debtor.

5.4 Books. Debtor will keep proper books of record and account in which full, true and correct entries in accordance with generally accepted accounting principles will be made of all dealings or transactions in relation to its business and activities.

5.5 Financial Information. Debtor will furnish to CIT (a) as soon as available, but in any event not later than 120 days after the end of each fiscal year of Debtor, a consolidated balance sheet of Debtor as at the end of such fiscal year, and consolidated statements of income and statements of cash flow of Debtor for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and audited by certified public accountants acceptable to CIT in its reasonable discretion; (b) as soon as available, but in any event not later than 90 days after the end of each of the first three quarterly periods of each fiscal year of Debtor, a consolidated balance sheet of Debtor as at the end of such quarterly period and a consolidated statement of income and cash flow of Debtor for such quarterly period and for the portion of the fiscal year then ended, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by the chief financial officer of Debtor; and (c) promptly, such additional financial and other information as CIT may from time to time reasonably request.

5.6 Further Assurances. Debtor will promptly, at any time and from time to time, at its sole expense, execute and deliver

to CIT such further instruments and documents, and take such further action, as CIT may from time to time reasonably request in order to further carry out the intent and purpose of this Agreement and to establish and protect the rights, interests and remedies created, or intended to be created, in favor of CIT hereby, including, without limitation, the execution, delivery, recordation and filing of financing statements and continuation statements. Debtor hereby authorizes CIT, in such jurisdictions where such action is authorized by law, to effect any such recordation or filing of financing statements without the signature of Debtor thereon and to file as valid financing statements in the applicable financing statement records, photocopies hereof and of any other financing statement executed in connection herewith. Debtor will pay, or reimburse CIT for, any and all fees, costs and expenses of whatever kind or nature incurred in connection with the creation, preservation and protection of CIT's security interest in the Equipment, including, without limitation, all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payments or discharge of any taxes or Liens upon or in respect of the Equipment, premiums for insurance with respect to the Equipment and all other fees, costs and expenses in connection with protecting, maintaining or preserving the Equipment and CIT's interests therein, whether through judicial proceedings or otherwise, or in connection with defending or prosecuting any actions, suits or proceedings arising out of or related to the Equipment; and all such amounts that are paid by CIT shall, until reimbursed by Debtor, constitute Obligations of Debtor secured by the Collateral.

5.7 No Disposition of Collateral. Debtor will not sell, convey, transfer, exchange, lease or otherwise relinquish possession or dispose of any of the Collateral or attempt or offer to do any of the foregoing.

5.8 No Liens. Debtor will not create, assume or suffer to exist any Lien of any kind upon the Collateral except for the security interest created hereby, and Debtor shall promptly, at its own expense, take such action as may be necessary to duly discharge any such Lien not excepted above if the same shall arise at any time. Debtor shall protect, save and keep harmless CIT from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable attorneys' fees) of whatsoever kind and nature that may be imposed on, incurred by or asserted at any time against CIT in any way relating to or arising out of any such Lien.

5.9 Debtor's Title; CIT's Security Interest; Personal Property. Debtor will warrant and defend its good and marketable title to the Equipment, and CIT's perfected first priority security interest in the Collateral, against all claims and

demands whatsoever. Debtor agrees that the Equipment shall be and at all times remain separately identifiable personal property. Debtor shall, at its expense, take such action (including the obtaining and recording of waivers) as may be necessary to prevent any third party from acquiring any right to or interest in the Equipment by virtue of the Equipment being deemed to be real property or a part of real property or a part of other personal property, and if at any time any person shall claim any such right or interest, Debtor shall, at its expense, cause such claim to be waived in writing or otherwise eliminated to CIT's satisfaction within 30 days after such claim shall have first become known to Debtor.

5.10 No Changes in Debtor. Without limiting the application of the terms of Subsection 2.3(b) hereof, Debtor will not (a) enter into any transaction of merger or consolidation unless it is the surviving Person and after giving effect to such merger or consolidation its tangible net worth equals or exceeds that which existed prior to such merger or consolidation; or (b) liquidate or dissolve; or (c) sell, transfer or otherwise dispose of all or any substantial part of its assets; or (d) except pursuant to the terms of Subsection 2.3(b) hereof, enter into any Prohibited Transaction; (e) change the form of organization of its business; (f) change in any material manner the business in which it is engaged on the date of this Agreement or (g) without thirty (30) days prior written notice to CIT, change its name or its chief place of business.

5.11 Use of Equipment; Maintenance; Identification.

(a) Debtor shall not at any time allow the Units to be located outside of the United States.

(b) Debtor will use the Equipment in a careful and proper manner, will comply with and conform to all governmental laws, rules and regulations relating thereto, and will cause the Equipment to be maintained and operated in accordance with all governmental laws, rules and regulations and the manufacturer's or supplier's instructions or manuals and only by competent and duly qualified personnel, and in all events (i) in accordance with prudent industry maintenance practices, (ii) as may be required to comply with all applicable insurance policies and Manufacturers' Warranties, (iii) in a manner consistent with maintenance practices used by a prudent owner or operator of equipment similar in nature to the Units, and (iv) in compliance with all applicable laws and regulations, including any applicable AAR Interchange Rules and rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment; provided, that Debtor shall comply in all respects with all applicable laws and regulations, including any applicable

Interchange Rules where non-compliance gives rise to fines, liens or criminal sanctions or impairs the function, value or utility of any such Unit or where such laws or regulations are related to safety matters. In the event that, prior to satisfaction of all Obligations, such laws or rules require any alteration, replacement, addition or modification of or to any part of any Unit, Debtor will conform therewith each Unit at its own cost and expense; provided, that Debtor may at its own expense, in good faith and by appropriate proceedings, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of CIT, involve any risk of the sale, forfeiture or loss of all or any part of the Equipment and, with respect to such proceedings, adequate reserves have been set aside on Debtor's books.

(c) Debtor will, at its own expense, keep and maintain the Equipment in good repair, condition and working order and furnish all parts, replacements, mechanisms, devices and servicing required therefor so that the value, condition and operating efficiency thereof will at all times be maintained and preserved, fair wear and tear excepted. All such repairs, parts, mechanisms, devices and replacements shall immediately, without further act, become part of the Equipment and subject to the security interest created by this Agreement. Debtor will not make or authorize any improvement, change, addition or alteration to the Equipment if such improvement, change, addition or alteration will impair the originally intended function or use of the Equipment or impair the value of the Equipment as it existed immediately prior to such improvement, change, addition or alteration. Any part added to the Equipment in connection with any improvement, change, addition or alteration shall immediately, without further act, become part of the Equipment and subject to the security interest created by this Agreement.

(d) Debtor will cause each Unit to be numbered with its reporting mark reported to the AAR and shown on the Supplement for such Unit, and will from and after such date keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon at least one side of each Unit, in letters not less than one inch in height, a legend substantially as follows:

"SUBJECT TO A SECURITY AGREEMENT RECORDED  
WITH THE INTERSTATE COMMERCE COMMISSION"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the rights of CIT and any assignee hereof. Except as provided hereinabove, Debtor will not place any such Units in operation or exercise any control or dominion over the same until the required legend shall have been so marked, and will replace promptly any such names and word or words which may be removed, defaced,

obliterated or destroyed. Debtor will not change the reporting mark of any Unit except (i) in accordance with a statement of new reporting marks to be substituted therefor, which statement shall be delivered to CIT by Debtor, (ii) with a Supplement to this Agreement with respect to such new reporting marks being filed or recorded in all public offices where this Agreement shall have been filed or recorded and (iii) with an opinion of counsel, satisfactory to CIT, being provided to CIT regarding the perfection of CIT's first priority and only security interest in such Units in connection with such new reporting marks. Except as above provided, Debtor will not allow the name of any Person to be placed on the Equipment as a designation that might reasonably be interpreted as a claim of a security interest in such Units; provided, however, that Debtor may cause the Equipment to be lettered with the names or initials or other insignia customarily used by Debtor on railroad equipment used by it of the same or a similar type.

(e) In the event that any Unit shall suffer an Event of Loss, Debtor shall promptly and fully inform Lender of such Event of Loss. If Debtor shall have elect to replace such Unit(s) in accordance with the terms of Section 2.3(a) hereof, Debtor shall, at its own cost and expense, prior to or concurrently with such replacement, (i) cause a supplement hereto, subjecting such Replacement Unit to the lien of this Agreement, duly executed by Debtor, to be delivered to Lender for execution, and upon such execution to be filed with the ICC pursuant to 49 U.S.C. Sec. 11303; and (ii) cause to be delivered to Lender an opinion of counsel as to the due filing of such supplement with respect to any Replacement Unit and the perfection of the Lien of Lender in such Replacement Units.

#### 5.12 Insurance.

Debtor shall obtain and maintain at all times on the Collateral, at its expense, "All-Risk" physical damage and if required by CIT, liability (including bodily injury and property damage and pollution liability) insurance in such amounts, against such risks, in such form and with such insurers as shall be satisfactory to CIT; provided, however, that the amount of physical damage insurance shall not be less than the greater of the full replacement value of the Collateral or 110% of the then aggregate outstanding principal amount of the Notes. All physical damage insurance policies shall be made payable to CIT as its interest may appear; if liability insurance is required by CIT, the liability insurance policies shall name CIT as additional insured. All such insurance policies will be in form, amount and substance acceptable to CIT. Debtor shall assign and deliver the policies of insurance or certificates thereof to CIT prior to policy expiration or upon CIT's request but CIT shall bear no duty or liability to ascertain the existence or adequacy of such insurance. Each insurance policy shall, among other

things, require that the insurer give CIT at least 30 days' prior written notice of any alteration in the terms of such policy or of the cancellation thereof and that the interests of CIT be continued insured regardless of any breach of or violation by Debtor of any warranties, declarations or conditions contained in such insurance policy. The insurance maintained by the Debtor shall be primary with no other insurance maintained by CIT (if any) contributory. To the extent that the Contract requires Debtor to obtain and maintain insurance coverage not contemplated by the foregoing, the requirement of such additional coverage is hereby incorporated by reference, and CIT shall be named additional insured or loss payee, as its interests may appear.

5.13 Contract Payments. If Debtor shall receive any payment from the City which should have been paid by the City directly to CIT after the occurrence and during the continuance of a Default or Event of Default, Debtor will hold such payment in trust for CIT and will immediately turn the same over to CIT in the form received, accompanied by any endorsement, if necessary.

5.14 Contract Amendments. So long as any Loan is outstanding hereunder or under any Note, Debtor will not, without the prior written consent of CIT, make or agree to any change order, amendment, modification or supplement to the Contract, waive any provision thereof, assign the Contract or any part thereof (except as herein provided) or agree to the termination of the Contract, in any manner (with respect to any of the foregoing) which might adversely affect (a) CIT's security interest in the Collateral or any part thereof (including any diminution in the amount of the Contract Payments) or (b) Debtor's ability to perform under the Contract.

5.15 Out-of-Specification Sludge; Hazardous Waste. Debtor will not, without the prior written consent of CIT, handle or transport Out-of-Specification Sludge or Contaminated Sludge, and should CIT's consent be granted, Debtor shall, prior to its handling or transporting of any such Out-of-Specification Sludge or Contaminated Sludge, (a) obtain and maintain such additional liability insurance in such amounts and on such terms as CIT in its sole discretion shall determine and (b) obtain and comply with all additional Environmental Matters arising as the result of such handling or transporting such Out-of-Specification Sludge or Contaminated Sludge.

5.16 Transportation Matters. Debtor will comply with all laws, rules and regulations of the ICC and any other agency having jurisdiction relating to the ownership, use and maintenance of the Equipment and will at all times be a party to the Transportation Contract and the Interchange Agreement.



## SECTION 6. SECURITY INTEREST.

### 6.1 Grant of Security Interest.

(a) As collateral security for the prompt and complete payment and performance when due of all the Obligations and in order to induce CIT to enter into this Agreement and make the Loans in accordance with the terms hereof and to extend other credit from time to time to Debtor, whether under this Agreement or otherwise, Debtor hereby assigns, conveys, mortgages, pledges, hypothecates and transfers to CIT, and hereby grants to CIT a first priority security interest in, all Debtor's right, title and interest in, to and under the Collateral.

(b) It is expressly agreed that, anything contained herein to the contrary notwithstanding, (i) Debtor shall at all times remain liable to observe and perform all of its duties and obligations under the Contract to the same extent as if this Agreement had not been made, (ii) the rights assigned hereunder shall not release Debtor from any of its duties or obligations under the Contract and (iii) CIT shall not have any obligation or liability under the Contract by reason of this Agreement or the receipt by CIT of any payment or property under the Contract or pursuant hereto, nor shall CIT be obligated to perform or fulfill any of the duties or obligations of the Debtor under the Contract or to make any payment thereunder, or to make any inquiry as to the nature or sufficiency of any payment or property received by it thereunder, or the sufficiency of performance by any party thereunder, or to present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts or the delivery of any property which may have been assigned to it or to which it may be entitled at any time or times.

### 6.2 CIT Appointed as Attorney-in-Fact.

(a) Debtor (i) hereby irrevocably constitutes and appoints CIT and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Debtor and in the name of Debtor or in its own name, from time to time in CIT's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be deemed necessary or desirable by CIT to accomplish the purposes of this Agreement and to protect and preserve, and/or exercise its rights and remedies with respect to, the Collateral and (ii) without limiting the generality of the foregoing, hereby gives CIT the power and right, on behalf of Borrower and without notice to or assent by Borrower, to do the following: to demand, enforce, collect, receive, receipt, and give release for any monies due or to become due under or arising out of or with respect to, any of

the Collateral, and to endorse all checks and other instruments, and to do and take all such other actions relating to any of the Collateral, to file any claims or institute any proceedings with respect to any of the foregoing which CIT deems necessary or desirable, and to compromise any such demand, claim or action. Debtor hereby ratifies all that said attorney shall lawfully do or cause to be done by virtue hereof; provided, however, that CIT agrees that as respects any of the rights hereby granted as such rights may relate to Contract Payments, CIT agrees that it may exercise such rights only upon the occurrence and during the continuance of Default or Event of Default hereunder. This power of attorney is a power coupled with an interest and shall be irrevocable. Debtor consents and agrees that any liability of the City to make Contract Payments, or otherwise, under the Contract may be extended by CIT, in whole or in part, without notice to Debtor and without affecting the liability of Debtor hereunder.

(b) The powers conferred on CIT hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. CIT shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to Debtor for any act or failure to act.

#### SECTION 7. EVENTS OF DEFAULT.

The following events shall each constitute an event of default (herein called "Event of Default") under this Agreement:

(a) Debtor shall fail to pay any Obligation within 10 days after the same becomes due (whether at the stated maturity, by acceleration or otherwise); or

(b) Any representation or warranty made by Debtor or any Guarantor, as the case may be, in this Agreement or in connection with any Loan, or in any document, certificate or financial or other statement now or hereafter furnished by Debtor or any Guarantor in connection with this Agreement shall at any time prove to be untrue or misleading in any material respect as of the time when made; or

(c) Debtor shall fail to observe any covenant, condition or agreement contained in Subsections 2.4, 5.7, 5.10, 5.11(a), 5.12, 5.13, 5.14, 5.15 or 5.16 hereof; or

(d) Debtor shall fail to observe or perform any other covenant, condition or agreement contained in this Agreement, and such failure shall continue unremedied for a period of 30 days after the earlier of (i) the date on which Debtor obtains, or

should have obtained, knowledge of such failure; or (ii) the date on which notice thereof shall be given by CIT to Debtor; or

(e) (i) Debtor or any parent or subsidiary or affiliate (including any Guarantor) of Debtor shall (A) default in the payment of any obligation to CIT or to any of CIT's subsidiaries or other affiliates, whether such obligation is for borrowed money, under any lease, under any guarantee or similar accommodation, or for the deferred purchase price of property including interest thereon, beyond the period of grace, if any, provided with respect thereto, or (B) default in the performance or observance of any other term, condition or agreement contained in any such obligation or in any agreement relating thereto, if the effect of such default is to cause, or permit the holder or holders of such obligation (or a trustee on behalf of such holder or holders) to cause such obligation to become due prior to its stated maturity or to realize upon any collateral given as security therefor; or

(ii) Debtor shall (A) default in the payment of any other obligation, whether such obligation is for borrowed money, under any lease, under any guarantee or similar accommodation, or for the deferred purchase price of property including interest thereon, beyond the period of grace, if any provided with respect thereto, or (B) default in the performance or observance of any other term, condition or agreement contained in any such obligation or in any agreement relating thereto, if the effect of such default is to cause, or permit the holder or holders of such obligation (or a trustee on behalf of such holder or holders) to cause such obligation to become due prior to its stated maturity or to realize upon any collateral given as security therefor; provided, however, that such other obligation shall have been in the original principal or lease rental amount or deferred purchase price of at least \$500,000.00 or shall have been a guarantee or similar accommodation of another obligation meeting the foregoing requirement; or

(f) The institution by Debtor or any Guarantor of proceedings to be adjudicated a bankrupt or insolvent, or the consent by Debtor or any Guarantor to the institution or bankruptcy or insolvency proceedings against it, or the commencement by Debtor of a voluntary proceeding or case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal, state or foreign bankruptcy, insolvency or other similar law, or the consent by Debtor or any Guarantor to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of Debtor or any Guarantor or of any substantial part of its respective property, or the making by Debtor or any Guarantor of any assignment for the benefit of creditors or the admission by Debtor or any Guarantor of its inability to pay its

debts generally as they become due, or its willingness to be adjudicated a bankrupt, or the failure of Debtor or any Guarantor generally to pay its debts as they become due, or the taking of corporate action by Debtor or any Guarantor in furtherance of any of the foregoing; or

(g) The entry of a decree or order for relief by a court having jurisdiction in respect of Debtor or any Guarantor adjudging Debtor or any Guarantor a bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment or composition of or in respect of Debtor or any Guarantor in an involuntary proceeding or case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal, state or foreign bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) of Debtor or any Guarantor or of any substantial part of its respective property, or ordering the winding-up or liquidation of Debtor's or any Guarantor's affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 days; or

(h) Debtor shall be in default or in breach of its obligations, beyond any applicable period of grace, under the Contract, any Transportation Contract, the Interchange Agreement or with respect to any Environmental Matters; or

(i) There shall occur a default or breach of any nature whatsoever under any Guaranty.

#### SECTION 8. REMEDIES.

8.1 If an Event of Default specified in Subsections 7(f) or (g) above shall occur, then, and in any such event, the Commitment shall immediately terminate and the principal amount of each Note, together with accrued interest thereon and all other amounts owing under or with respect to this Agreement shall become immediately due and payable without any notice or other action by CIT, and if any other Event of Default shall occur and be continuing, then, and in any such event, CIT may, by notice of default given to Debtor, (a) terminate forthwith the Commitment and/or (b) declare the Notes and all other amounts owing under or with respect to this Agreement to be forthwith due and payable, whereupon the principal amount of the Notes, together with accrued interest thereon and all other amounts owing under or with respect to this Agreement shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived. During the continuance of any Event of Default hereunder, CIT shall have the right to pursue and enforce any of its rights and remedies under this Section 8.

8.2 If an Event of Default shall occur and be continuing, CIT may exercise in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of secured parties under the Code or under any other applicable law. Without limiting the generality of the foregoing, Debtor agrees that in any such event, CIT, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon Debtor or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase or otherwise dispose of and deliver the Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange or broker's board or at any of CIT's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. CIT shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Debtor, which right or equity is hereby expressly released. Debtor further agrees, at CIT's request, to assemble the Collateral, make it available to CIT at places which CIT shall reasonably select, whether at Debtor's premises or elsewhere. CIT shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale (after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of any or all of the Collateral or in any way relating to the rights of CIT hereunder, including attorneys' fees and legal expenses) to the payment in whole or in part of the Obligations, in such order as CIT may elect and only after so applying such net proceeds and after the payment by CIT of any other amount required by any provision of law (including Section 9-504(1)(c) of the Code), need CIT account for the surplus, if any, to Debtor. To the extent permitted by applicable law, Debtor waives all claims, damages, and demands against CIT arising out of the repossession, retention or sale of the Collateral. Debtor agrees that CIT need not give more than 10 days' notice (which notification shall be deemed given when mailed, postage prepaid, addressed to Debtor at its address set forth in Subsection 9.2 hereof) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters. Debtor shall be liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which CIT is entitled.

8.3 Debtor agrees to pay all costs of CIT, including attorneys' fees, incurred with respect to the collection of any of the Obligations and the enforcement of any of its respective rights hereunder.

8.4 Debtor hereby waives presentment, demand, protest or any notice, except as hereinabove provided in Section 8 (to the extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral.

8.5 At the time of the acceleration of any Note pursuant to this Section, there shall be due and payable, in addition to the accelerated amounts set forth herein and all other amounts set forth herein, without notice or demand of any kind, as liquidated damages for loss of a bargain and not as a penalty, a lost transaction fee equal to the full outstanding principal amount of the Note being accelerated multiplied by the Section 8 Percentage.

#### SECTION 9. MISCELLANEOUS.

9.1 No Waiver; Cumulative Remedies. No failure or delay on the part of CIT in exercising any right, remedy, power or privilege hereunder or under any Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No right or remedy in this Agreement is intended to be exclusive but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to CIT at law or in equity; and the exercise by CIT of any one or more of such remedies shall not preclude the simultaneous or later exercise by CIT of any or all such other remedies. To the extent permitted by law, Debtor waives any rights now or hereafter conferred by statute or otherwise which limit or modify any of CIT's rights or remedies under this Agreement.

9.2 Notices. All notices, requests and demands to or upon any party hereto shall be deemed to have been duly given or made when deposited in the United States mail, first class postage prepaid, addressed to such party as follows, or to such other address as may be hereafter designated in writing by such party to the other party hereto:

DEBTOR:    MERCO JOINT VENTURE  
            157 Albany Avenue  
            Freeport, New York 11520  
            Attention: Fred Scalamandre

CIT:           The CIT Group/Equipment Financing, Inc.  
              1211 Avenue of the Americas  
              New York, New York 10036  
              Attention: Senior Vice President, Credit

9.3 Payment of Expenses and Taxes; Indemnity; Performance  
by CIT of Debtor's Obligations.

(a) Debtor agrees, whether or not the transactions contemplated by this Agreement shall be consummated, to pay (i) all costs and expenses of CIT in connection with the negotiation, preparation, execution and delivery of this Agreement and the other documents relating hereto and in connection with the investigation and review of all Environmental Matters and all other matters relating hereto, including, without limitation, the reasonable fees and disbursements of counsel to CIT; (ii) all fees and taxes in connection with the recording of this Agreement or any other document or instrument required hereby; and (iii) all costs and expenses of CIT in connection with the enforcement of this Agreement and the Notes, including all reasonable legal fees and disbursements arising in connection therewith (except that a reasonableness standard may not apply to legal fees and disbursements incurred with respect to the provisions of Section 8 hereof). Debtor also agrees to pay, and to indemnify and save CIT harmless from any delay in paying, all taxes, including, without limitation, sales, use, stamp and personal property taxes (other than any corporate income, capital, franchise or similar taxes payable by CIT with respect to the payments made to CIT hereunder or thereunder) and all license, filing, and registration fees and assessments and other charges, if any, which may be payable or determined to be payable in connection with the execution, delivery and performance of this Agreement or the Notes or any modification thereof.

(b) Debtor hereby further agrees, whether or not the transactions contemplated by this Agreement shall be consummated to pay, indemnify, and hold CIT harmless from and against any and all other liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, out-of-pocket costs, expenses (including reasonable legal expenses (except that a reasonableness standard may not apply to legal expenses incurred with respect to the provisions of Section 8 hereof)) or disbursements of any kind or nature whatsoever arising out of or with respect to this Agreement, the Equipment or CIT's interest therein, including, without limitation, (i) the execution, delivery, enforcement, performance or administration of this Agreement and the Notes, (ii) the manufacture, purchase, ownership, possession, use, selection, operation or condition of the Equipment or any part thereof and (iii) any failure by Debtor to obtain or comply with any Environmental Matters or any federal, state or local statute, rule, regulation or governmental

order governing the transportation of sewage sludge or other hazardous materials, substances or wastes, or in connection with any release, discharge or spill or the improper disposal of any sewage sludge, hazardous substance, material or waste (including any cost or expense of clean-up or remediation) (all the foregoing being referred to as the "indemnified liabilities"), provided, that Debtor shall have no obligation hereunder with respect to indemnified liabilities arising from the gross negligence or wilful misconduct of CIT.

(c) If Debtor fails to perform or comply with any of its agreements contained herein and CIT shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the expenses of CIT incurred in connection with such performance or compliance, together with interest thereon at the rate provided for in the Notes shall be payable by Debtor to CIT on demand and until such payment shall constitute Obligations secured hereby.

9.4 Commitment Fee. CIT acknowledges receipt from Debtor of a commitment fee in the amount of \$30,000.00 (the "Commitment Fee"). CIT agrees to refund to Debtor after the expiration of the Commitment period hereunder and completion by CIT of all follow-up matters related to the transactions contemplated hereby (net, however, of any out-of-pocket fees, costs, disbursements and expenses incurred by CIT in connection with the transactions contemplated hereby; the Commitment Fee, as netted, the "Net Amount"), as the refundable portion of the Commitment Fee, an amount which bears the same relationship to the Net Amount as the aggregate principal amount of all Loans made hereunder (but in no event to exceed the maximum amount permitted pursuant to the terms of Subsection 2.1 hereof) bears to the maximum amount permitted pursuant to the terms of Subsection 2.1 hereof. Debtor agrees that the difference, if any, between the Net Amount and the amount determined in accordance with the foregoing sentence shall be retained by CIT. In the event no Loan is made hereunder, other than for the gross negligence or wilful misconduct of CIT, CIT shall retain the entire Commitment Fee.

9.5 Survival of Representations and Warranties. All representations and warranties made in this Agreement and any certificates delivered pursuant hereto or thereto shall survive the execution and delivery of this Agreement and the making of the Loans hereunder, and the agreements contained in Subsection 9.3 hereof shall survive payment of the Notes.

9.6 Amendments; Waivers. No provision of this Agreement, the Notes, or any related agreements, may be amended or modified in any way, nor may noncompliance therewith be waived, except pursuant to a written instrument executed by CIT and Debtor. In the case of any waiver, CIT and Debtor shall be restored to their former position and rights hereunder, under the outstanding



Notes, and under any related agreements, and any Default or Event of Default waived shall be deemed to be cured and not continuing, but no such waiver shall in any way be, or be construed to be, a waiver of any other or subsequent Default or Event of Default, or impair any right consequent thereon.

9.7 Counterparts. This Agreement and any document executed pursuant hereto may, at the sole option of CIT, be executed by the parties hereto on any number of separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

9.8 Headings. The headings of the Sections and paragraphs are for convenience only, are not part of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

9.9 Successors or Assigns. THIS AGREEMENT SHALL BE BINDING UPON AND INURE TO THE BENEFIT OF DEBTOR AND CIT AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, EXCEPT THAT DEBTOR MAY NOT ASSIGN OR TRANSFER ITS RIGHTS HEREUNDER OR ANY INTEREST HEREIN WITHOUT THE PRIOR WRITTEN CONSENT OF CIT.

9.10 Merger Clause. This Agreement contains the complete, final and exclusive statement of the terms of the agreement between CIT and Debtor relating to the transactions hereby contemplated.

9.11 Construction. (a) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by law, Debtor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. **THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

(b) The Consent to Assignment is not intended to modify the rights and obligations of CIT and Debtor under this Agreement, and to the extent any provisions herein may be inconsistent with the provisions of the Consent to Assignment, the provisions of this Agreement shall prevail.

9.12 Jurisdiction. **DEBTOR HEREBY IRREVOCABLY CONSENTS AND AGREES THAT ANY LEGAL ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR IN ANY WAY IN CONNECTION WITH THIS AGREEMENT MAY BE INSTITUTED OR BROUGHT IN THE COURTS OF THE STATE OF NEW YORK, IN THE COUNTY**

OF NEW YORK, OR THE UNITED STATES COURTS FOR THE SOUTHERN DISTRICT OF NEW YORK, AS CIT MAY ELECT, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, DEBTOR HEREBY IRREVOCABLY ACCEPTS AND SUBMITS TO, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF ANY SUCH COURT, AND TO ALL PROCEEDINGS IN SUCH COURTS. DEBTOR IRREVOCABLY CONSENTS TO SERVICE OF ANY SUMMONS AND/OR LEGAL PROCESS BY REGISTERED OR CERTIFIED UNITED STATES AIR MAIL, POSTAGE PREPAID, TO DEBTOR AT THE ADDRESS SET FORTH IN SUBSECTION 9.2 HEREOF, SUCH METHOD OF SERVICE TO CONSTITUTE, IN EVERY RESPECT, SUFFICIENT AND EFFECTIVE SERVICE OF PROCESS IN ANY SUCH LEGAL ACTION OR PROCEEDING. NOTHING IN THIS AGREEMENT SHALL AFFECT THE RIGHT TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR LIMIT THE RIGHT OF CIT TO BRING ACTIONS, SUITS OR PROCEEDINGS IN THE COURTS OF ANY OTHER JURISDICTION. DEBTOR FURTHER AGREES THAT FINAL JUDGMENT AGAINST IT IN ANY SUCH LEGAL ACTION, SUIT OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION, WITHIN OR OUTSIDE THE UNITED STATES OF AMERICA, BY SUIT ON THE JUDGMENT, A CERTIFIED OR EXEMPLIFIED COPY OF WHICH SHALL BE CONCLUSIVE EVIDENCE OF THE FACT AND THE AMOUNT OF THE LIABILITY.

9.13 Waiver of Trial by Jury. DEBTOR AND CIT IN ANY LITIGATION RELATING TO OR IN CONNECTION WITH THIS AGREEMENT IN WHICH THEY SHALL BE ADVERSE PARTIES WAIVE TRIAL BY JURY.

9.14 Authorization to Date, Complete Blanks and Correct Errors. Debtor hereby irrevocably authorizes CIT and CIT's agents, representatives and employees to date, to complete any blank spaces contained in, and to correct any errors appearing in, this Agreement, the Notes or in any documents relating hereto or thereto.

9.15 Authorization to Sign. Notwithstanding anything to the contrary which may be contained in the Joint Venture Agreement or in any other document, John P. Picone, Inc., and RGM Liquid Waste Removal Corp., hereby irrevocably authorize, as their respective agent, any duly authorized officer of Peter Scalamandre & Sons, Inc., as Managing Party, to execute the Supplements and the Notes hereunder, substantially in the forms of Exhibit B and C attached hereto; provided, however, that execution of the Supplements and the Notes by the Managing Party, as agent, shall be in the sole discretion of CIT.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

MERCO JOINT VENTURE

By: Peter Scalamandre & Sons, Inc.

By: [Signature]

Title: Pres.

STATE OF NEW YORK )  
COUNTY OF NASSAU ) ss:

On this 15 day of NOVEMBER, 1993, before me personally appeared Peter Scalamandre, to me personally known, who being duly sworn, says that he is a PRESIDENT of Peter Scalamandre & Sons, Inc. that said instrument was signed on November 15, 1993 on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

By: [Signature]

Notary Public

[NOTARIAL SEAL]

MARTIN S. LEVINE  
Notary Public, State of New York  
No 01LE4741038  
Qualified in Westchester County  
Commission Expires June 30, 1995

By: John P. Picone, Inc.

By: [Signature]

Title: President

STATE OF New York )  
COUNTY OF NASSAU ) ss:

On this 15 day of November, 1993, before me personally appeared JOHN P. PICONE, to me personally known, who being duly sworn, says that he is a PRESIDENT of JOHN P. PICONE, Inc., that said instrument was signed on November 15, 1993 on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

By: [Signature]

Notary Public

[NOTARIAL SEAL]

~~MARTIN S. LEVINE  
Notary Public, State of New York  
No. 01LE4741038  
Qualified in Westchester County  
Commission Expires June 30, 1995~~

MARTIN S. LEVINE  
Notary Public, State of New York  
No. 01LE4741038  
Qualified in Westchester County  
Commission Expires June 30, 1995

By: RGM Liquid Waste  
Removal Corp.

By: Ralph S. Macchi

Title: President

STATE OF New York )  
COUNTY OF NASSAU ) ss:

On this 15 day of NOVEMBER, 1993, before me  
personally appeared RALPH G. MACCHI, to me  
personally known, who being duly sworn, says that he is a  
President of RGM Liquid Waste Removal Corp.  
that said instrument was signed on November 15, 1993 on behalf of  
said corporation by authority of its Board of Directors, and he  
acknowledged that the execution of the foregoing instrument was  
the free act and deed of said corporation.

By: [Signature]

Notary Public

[NOTARIAL SEAL]

MARTIN S. LEVINE  
Notary Public, State of New York  
No 01LE4741038  
Qualified in Westchester County  
Commission Expires June 30, 1995

THE CIT GROUP/EQUIPMENT  
FINANCING, INC.

By: \_\_\_\_\_

Title: Vice President

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss:

On this 23rd day of November, 1993, before me personally appeared Stephen E. Altner, to me personally known, who being duly sworn, says that he is a Vice President of The CIT Group/Equipment Financing, Inc. that said instrument was signed on November 23, 1993 on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

By: Joshua S. Levine

Notary Public

[NOTARIAL SEAL]

JOSHUA S. LEVINE  
NOTARY PUBLIC, State of New York  
No. 4726650  
Qualified in Westchester County  
Commission Expires August 31, 1994

**Exhibit A**

to that certain Loan and Security Agreement between Merco Joint Venture as Debtor and The CIT Group/Equipment Financing, Inc. as Secured Party ("Agreement").

23 Railcars purchased by Merco from Berwick Freight Car Company with the following markings:

Manufacturer	Equipment Description	Units	Serial	Nos.		
=====	=====	=====	=====	=====		
Berwick Freight Car Co.	Ultra 2-Unit Articulated Railcars	4	MERX0001	MERX0003		
			MERX0002	MERX0004		
		14	MERX0005	MERX0012		
			MERX0006	MERX0013		
			MERX0007	MERX0014		
			MERX0008	MERX0015		
			MERX0009	MERX0016		
			MERX0010	MERX0017		
			MERX0011	MERX0018		
			5	MERX0019	MERX0021	
		MERX0020		MERX0022		
				MERX0023		
		Totals -	- - - - -	23	- - - - -	- - - - -

and other railcars purchased pursuant to the agreement.

EXHIBIT A

Size and Type  
of Equipment

Number of Reporting  
Units Marks



\_\_\_\_\_, 199\_

SUPPLEMENT

This Supplement is executed and delivered by MERCJO JOINT VENTURE ("Debtor") pursuant to the terms of a Loan and Security Agreement ("Agreement") dated as of \_\_\_\_\_, 1993, between Debtor and THE CIT GROUP/ EQUIPMENT FINANCING, INC. ("CIT"). Terms defined in the Agreement shall have the respective meanings given them in the Agreement unless otherwise defined herein or unless the context otherwise requires.

1. Debtor hereby confirms that the proceeds of the Loan made this date shall be used to finance or refinance the purchase of the items of personal property ("Unit of Equipment") set forth below:

<u>Qty.</u>	<u>Model/Mfrs.</u>	<u>Description</u>	<u>Serial No.</u>	<u>Cost</u>
-------------	--------------------	--------------------	-------------------	-------------

SEE ATTACHED EXHIBIT A

2. Debtor hereby represents and warrants that the above described items of personal property have been delivered to it, duly assembled and in good working order at \_\_\_\_\_. Debtor confirms that the Equipment will regularly be transporting sealed containers of dewatered sludge between New York City, New York and Mile High Ranch, Sierra Blanca, Hudspeth County, Texas, or such other Application Site as may have been disclosed in writing by Debtor to CIT.

3. Debtor hereby affirms that the representations and warranties set forth in Section 4 of the Agreement are true and correct as of the date hereof.

4. Debtor hereby affirms that CIT has made a Loan to it for the purchase of the above described Unit of Equipment, which loan is evidenced by a Note, in the principal amount of \$\_\_\_\_\_, dated \_\_\_\_\_, 199\_.

5. Debtor hereby affirms that CIT has a security interest in the items of personal property described above as set forth in Section 6.1 of the Agreement.

DEBTOR: MERCO JOINT VENTURE

By: PETER SCALAMANDRE &  
SONS, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: JOHN J. PICONE, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: RGM LIQUID WASTE  
REMOVAL CORP.

By: \_\_\_\_\_

Title: \_\_\_\_\_

THE CIT GROUP/EQUIPMENT  
FINANCING, INC.

By: [Signature]

Title: Vice President

## PROMISSORY NOTE

New York, New York  
, 1993

\$ \_\_\_\_\_

FOR VALUE RECEIVED, MERCO JOINT VENTURE ("Debtor"), promises to pay to the order of THE CIT GROUP/EQUIPMENT FINANCING, INC. ("CIT"), at such address as CIT may designate, in lawful money of the United States, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) in forty-eight (48) consecutive installments as follows:

forty-seven (47) equal consecutive monthly installments of principal in the amount of \$ \_\_\_\_\_ each and a forty-eighth (48th) and final installment of principal in the amount of \$ \_\_\_\_\_. The first installment of principal shall be due and payable on \_\_\_\_\_, 1993, with the following installments to be due and payable on the same day of each month thereafter until payment in full of this Note.

Debtor shall pay interest together with each such installment of principal, in like money, from the date hereof until payment in full, on the unpaid principal balance hereof. The interest rate in effect for each Interest Period shall be a rate per annum equal to 2.90 percent (2.90%) above the LIBOR Rate, but in no event to exceed the maximum rate permitted by applicable law. Interest shall be calculated on the basis of a 360-day year and actual number of days elapsed. Any amount not paid when due under this Note shall bear late charges thereon, calculated at the Late Charge Rate, from the due date thereof until such amount shall be paid in full. Each payment shall be applied first to the payment of any unpaid late charges, second to the payment of any unpaid interest on the principal sum, and third to the payment of principal.

This Note is one of the Notes referred to in the Loan and Security Agreement, dated as of \_\_\_\_\_, 1993, between Debtor and CIT (herein, as the same may from time to time be amended, supplemented or otherwise modified, called the "Agreement"), is secured as provided in the Agreement and is subject to prepayment only as provided therein, and the holder hereof is entitled to the benefits thereof.

Terms defined in the Agreement shall have the same meaning when used in this Note unless the context shall otherwise require.

Debtor hereby waives presentment, demand for payment, notice of dishonor and any and all other notices or demands in connection with the delivery, acceptance, performance, default or enforcement of this Note and hereby consents to any extensions of time, renewals, releases of any party to this Note, waivers or

modifications that may be granted or consented to by the holder of this Note.

Upon the occurrence of any one or more of the Events of Default specified in the Agreement, the amounts then remaining unpaid on this Note, together with any interest accrued, may be declared to be (or, with respect to certain Events of Default, automatically shall become), immediately due and payable as provided therein.

In the event that any holder shall institute any action for the enforcement or the collection of this Note, there shall be immediately due and payable, in addition to the unpaid balance hereof, all late charges, and all costs and expenses of such action, including attorneys' fees. DEBTOR AND CIT in any litigation relating to or in connection with this Note in which they shall be adverse parties, WAIVE TRIAL BY JURY, and Debtor waives the right to interpose any setoff, counterclaim or defense of any nature or description whatsoever.

Debtor agrees that its liability hereunder is absolute and unconditional without regard to the liability of any party and that no delay on the part of the holder hereof in exercising any power or right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof or the exercise of any other power or right.

If, for any reason, the interest imposed upon monies owing under the terms of this Note should be in excess of the amount allowed by applicable law, then (a) such excess monies shall not be deemed to be usurious or interest but shall be applied toward the reduction of principal to the extent principal monies are owed, and any excess over and above principal monies owed, shall be refunded to Debtor and (b) if CIT elects to accelerate the maturity of, or if CIT permits Debtor to prepay the indebtedness described in this Note, any amounts which because of such action would constitute interest may never include more than the maximum rate of interest authorized by applicable law, and excess interest, if any, provided for in the Agreement, in this Note or otherwise, shall be credited to Debtor automatically as of the date of acceleration or prepayment.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND  
INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW  
YORK.

MERCO JOINT VENTURE

By: Peter Scalamandre & Sons, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: John P. Picone, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: RGM Liquid Waste Removal Corp.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Schedule A

The consent of the City of New York is required as set forth in the  
Consent to Assignment.

Schedule B

In the summer of 1992, an action was commenced entitled State of Texas and The Texas Historical Commission vs. Jack Ferguson, Myron O. Knudson, The United States Environmental Protection Agency, and Merco Joint Venture (Civil Action No. P 92 CA 017). On October 30, 1992, the federal district judge for the Western District of Texas dismissed the State of Texas' causes of action regarding the Sierra Blanca beneficial land application project against both the Environmental Protection Agency (EPA) and Merco Joint Venture (Merco). The federal judge granted both EPA's and Merco's motions for summary judgment, and Merco's motion to dismiss. Merco filed an Application for Attorneys' Fees against the State on 12/28/92.